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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/687,228 Confirmation No. 9854  
Applicant : Steven D. Culhane  
Filed : October 16, 2003  
TC/A.U. : 3765  
Examiner : Alissa L. Hoey

Docket No. : 02-200-2  
Customer No. : 34704

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

REQUEST FOR NEW OFFICE ACTION

A review of the above-referenced U.S. patent application shows that on August 30, 2007, the Board of Patent Appeals and Interferences reversed the Examiner on all grounds. Subsequent to the reversal, the Examiner issued an office action which was signed by Supervisory Patent Examiner, Gary L. Welch. A review of MPEP §1214.04 shows that issuance of this office action was improper. According to the aforementioned section of the MPEP, as well as MPEP §1214.07, the matter has to be submitted to the Technology Center Director for authorization to reopen prosecution. Further, the Technology Center Director's approval must be placed on the action reopening prosecution.

With regard to the rejection under 35 U.S.C. 112, first paragraph, the Board has decided against the Examiner's position and decided that the instant application is enabling for the

claimed subject matter. Thus, the rejection is defective on the grounds of res judicata. In this regard, it should be noted that the Examiner could have requested rehearing of the Board decision and has failed to do that. Thus, the issue is closed. The Technology Center Director is hereby requested to instruct the Examiner not to make this rejection.

With respect to the rejection under 35 U.S.C. 112, second paragraph, the rejection should be withdrawn in view of the statement by the Board in its decision that a person of ordinary skill in the art would know how to make a non-stretch fabric material as evidenced by Appendix D to the Appeal Brief. If one would know how to make a non-stretch fabric material, it follows that one would know what a non-stretch fabric material is. The Technology Center Director is hereby requested to instruct the Examiner not to make this rejection.

With respect to the Foo reference cited by the Examiner, it is no better than Kratz and has the same exact deficiencies. Since it is no better than Kratz, the rejection should be withdrawn along with all the other rejections based on prior art and the case should be allowed. The Technology Center Director is hereby requested to instruct the Examiner to allow the case.

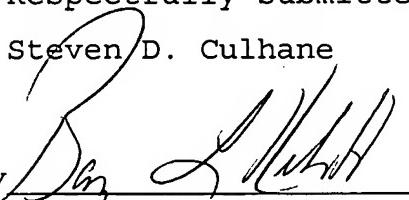
Clearly, the Examiner has given no reason why Foo was not found during the search that was conducted in this application

prior to the case being sent to the Board of Appeals for decision.

Respectfully submitted,

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By

  
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I, Karen M. Gill, hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on November 30, 2007.

